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SWAMI RAMANAND TEERTH MARATHWADA UNIVERSITY NANDED

A critical study on Injunction of Principles and Procedure in India

SYNOPSIS

Submitted to the **Swami Ramanand Teerth Marathwada University, Nanded** in fulfillment of the requirement for Degree of Doctor of Philosophy in Law

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Introduction

A critical study on Injunction of Principles and Procedure in India

An injunction is a **legal** and **equitable remedy** in the form of a special court order that compels a party to do or refrain from specific acts. "When a court employs the extraordinary remedy of injunction, it directs the conduct of a party, and does so with the backing of its full coercive powers. A party that fails to comply with an injunction faces criminal or civil penalties, including possible monetary sanctions and even imprisonment. They can also be charged with contempt of court. Counter injunctions are injunctions that stop or reverse the enforcement of another injunction; an injunction is thus a prohibitive equitable remedy granted by a court at the suit of party complainant directed to a defendant. Injunction is used for providing justice to the litigant in need of urgent relief and fair play when other remedies may take long time and defeat the course of justice

Injunction is universally accepted to be the principal and most important process issued by courts of equity in India and abroad. Injunction has been defined as "a judicial process operating in personam, and requiring the person to whom 1] it is directed to do or refrain from doing a particular thing.2] The purpose of injunction is to restrain action, 3] or to furnish preventive relief against irreparable mischief or injury, 4] or for preservation of status quo.5] It is aimed at protection for the future 6] and is not issued as punishment for a past act or transaction.

The law of injunctions is lucid and fast-evolving, as it is not codified and encapsulated in a single document. With every ground-breaking decision of the higher echelons of justice, with each work of eminence on the subject new paradigms are added to the ever-expanding dimensions of the subject. In recent years, the use of the remedy has travelled beyond the traditional areas like immovable property and torts, into intellectual property and environment. The increase in invocation of the relief bears testimony to its potential and the expectations of litigants and lawyers alike. New challenges are posed by the rapidly disappearing commercial boundaries owing to advancement of technology. Whether the law of injunctions, in theory and in practice, is able to meet the expectations and does it prove to be effective tool for dispensation of justice, needs to be assessed. Endeavour is made herein to briefly outline the contours of injunctions as administered applied and enforced in India with its assessment focusing on procedure and principles to the practices in other countries. Also, a discussion of the evolution of injunctions procedure and

principles and their extent of application is undertaken while considering kinds and classifications of injunctions.

Fundamental principle of injunctions: As per the principle, whenever a right exists or is created by contract, or arises out of ownership of property or is otherwise cognizable by law, a violation of that right will be prohibited. The exception to this would be in cases where there are other considerations of policy or expediency which prohibit resort to this remedy. In India, suits to obtain an injunction are dealt by all Civil Courts, with the exception of Presidency and Provincial Small Cause Courts, and therefore this study has wide application.

KIND and CHARACTERISTICS OF INJUNCTIONS:

1] Temporary Injunctions: To preserve, the rights of both the parties, pending the final determination and subject to the final decision and decree. This injunctive power to restore the status quo ante; that is, to make whole again someone whose rights have been violated, is essential to the concept of fairness (equity). The power conferred under Order XXXIX Rules 1 and 2 of Code of Civil Procedure, 1908 in granting or refusing temporary injunction has remained within the realm of discretion (as evident from variance in decisions of courts) which is to be exercised in accordance with reasons and sound judicial principles. Temporary injunction has been granted not as a matter of routine but in rare cases under compelling circumstances similarly, temporary mandatory injunction is perceived as an extraordinary relief and is granted only in exceptional cases. Orders granting or denying a preliminary injunction determine that the Court, balancing the respective equities of the parties, concludes that pending trial on the merits the defendant should, or should not, be restrained from exercising the rights. Interlocutory proceedings are incidental to the main proceedings. Interim orders are being passed for the protection of rights of the parties. Interlocutory proceedings stand independent of the main dispute between the parties. They are steps taken for facilitating the just and fair disposal of the main dispute. The purpose of temporary injunction being to maintain the status quo, the Court has been granting the relief according to **legal principles ex debito justitae.**

2] Perpetual Injunctions: Perpetual injunction is an equitable relief which is granted at the final stage after conclusion of trial and finally determines the rights of the parties. The discretionary power in granting such relief is based on judicial principles and is not exercised arbitrarily. It can be granted for breach of an obligation or invasion of a legal right. After the establishment of his legal right and of the fact of its violation, a plaintiff is in general entitled to a perpetual injunction to prevent the recurrence of the wrong, unless there is something peculiar in the circumstances of the case, such as laches , or when the interference with the plaintiff's right is trivial

3] **Mandatory Injunction:** A mandatory injunction is an injunction that requires the defendant to act in a particular way. Mandatory injunctions can be classified as either restorative or enforcing. A restorative mandatory injunction requires the defendant to correct the consequences of his past actions. An enforcing mandatory injunction requires the defendant to carry out some positive obligation. In theory there is no difference whether the injunction sought is mandatory or prohibitory. However, in practice, the courts tend to be less willing to grant a mandatory injunction than a prohibitory injunction. The reason for this is that a mandatory injunction is more intrusive than a prohibitory injunction. Interlocutory Mandatory Injunctions are rare.

Statement of problem: The problem is that the bulk of the population suffers civil injustice, without even knowing that their rights are being violated, and the few who are aware, hesitate to take action. Many believe that for the wrongs done to them, there is nothing they can do. Most find themselves unable to access the justice system for financial reasons. To add insult to injury, with the delays that take place, most of those who do come to Court, unable to bear the weight and the mounting costs, and with little hope of recompense for the loss, give up (surrender) en route and blame the system. Others (who do not come to Court) quietly suffer injustice, blaming their own destiny. The other or the second problem is the phenomenon of a party in the right, who has come to the Court, succumbing (or surrendering) to the wrongdoer en route i.e., before receiving justice at the hands of the Court. He gives up the whole or part of a genuine claim, or pays up something to remove the nuisance only because he could no longer bear the burden of mounting costs, the obstructionist tactics of the other side, and the court delays. All the above mentioned problems need to be considered in the guiding light of principles and procedures, so justice can promptly be delivered.

Aims and objectives of Research: The law relating to injunctions is practically of importance. The jurist Spelling has brilliantly remarked, " Without the power to prevent as well as to undo wrongs, to restrain as well as to compel action, to preserve as well as to reinstate the status of persons and things, Courts of equity would possess but little power and command but little respect as dispensers of justice and arbiter between man and man. The important restraining function is given effect by the great extraordinary remedy of injunctions which may appropriately be termed as strong arms of Courts of Equity."

A grant of interlocutory injunction at times decides the fate of litigation. Sometimes, the refusal of injunction may make the suit in fructuous. It is a relief which the Court may or may not allow. This relief has to be exercised in accordance with certain well-established principles and procedures, hence the study aims to

1] To study the origin and Historical development, meaning, nature, characteristics, legislative and judicial factors, and importance of injunction.

2] To study the principles and Procedures in grant of Injunction.

3] To study leading cases decided by Indian Judiciary and United Kingdom, United States of America, Australia, Canada, Turkey.

4] To study Divergence of Judicial Opinion in Injunction.

5] To study the effectiveness of injunction as a measure to advance justice.

6] To study whether there is a need to lay down broad guidelines for new challenges in the backdrop of changing society.

Significance of Study: Courts continuously grapple with the issue of whether to grant an injunction, more so at the interlocutory stage, It would be useful to refer to the following observations made in the case of Maria Margarida Sequeria Fernandes and Others v. Erasmo Jack de Sequeria(Dead) through L.Rs.

" It is the duty and the obligation of the Court to at least dispose of application of grant of injunction as expeditiously as possible. It is the demand of equity and justice. Grant or refusal of an injunction in a civil suit is the most important stage in the civil trial. Due care, caution, diligence and attention must be bestowed by the judicial officers and judges while granting or refusing injunction. In most cases, the fate of the case is decided by grant or refusal of an injunction. Experience has shown that once an injunction is granted, getting it vacated would become a nightmare for the defendant. In order to grant or refuse injunction, the judicial officer or the judge must carefully examine the entire pleadings and documents with utmost care and seriousness."

Injunction is a protective and preventive relief, Relief by specific performance.

Judge Y. S. Rao spelled out factors to circumscribe the range in which injunctions are issued:

a) An injunction is an equitable remedy

b) The party, who seeks equitable relief, must come with clean hands

c) The possession sought to be protected by grant of injunction must be lawful possession

d) In the absence of irreparable loss, damages are the remedy and therefore, injunction cannot be granted.

e) Where there is an efficacious relief which is alternate to injunction and is adequate, no injunction should be granted.

f) Juridical possession is also a valid ground to grant injunction.

g) Question of title may be incidentally gone into, while granting an injunction.

h) Injunction cannot be granted where the plaintiff has entered into an illegal agreement and is trying to take advantage of its terms.

The scope of operation of injunctions is as wide as the scope of civil suits itself. A civil suit can bring each and every civil cause under its ambit. Section 9 of Code of Civil Procedure prescribes that: " The Courts shall (subject to the provisions herein contained) have jurisdiction to try all Suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred." Explaining the breadth of scope of a civil suit, **the Supreme Court stated:**

" The expansive nature of the Section is demonstrated by use of phraseology both positive and negative. The earlier part opens the door widely and latter debars entry to only those which are expressly or impliedly barred. The two explanations, one existing from inception and latter added in 1976 bring out clearly the legislative intention of extending operation of the Section to such religious matters where right to property or office is involved irrespective of whether any fee is attached to the office or not. The language used is simple but explicit and clear. It is structured on the basic principle of a civilized jurisprudence that absence of machinery for enforcement of right renders it nugatory. The heading which is normally key to the Section brings out unequivocally that all civil suits are cognizable unless barred. What is meant by it is explained further by widening the ambit of the Section by use of the word `shall' and the expression, `all suits of a civil nature' unless `expressly of impliedly barred'. Each word and expression casts an obligation on the court to exercise jurisdiction for enforcement of right. The word `shall' makes it mandatory. No court can refuse to entertain a suit if it is of description mentioned in the Section."

An injunction may therefore be issued to enforce rights to property, rights of worship, right to share in offerings, rights of franchise, rights of pre-emption, rights to hereditary offices, and the like. Whereas the kind of cases that may not attract the relief of injunction may be those involving principally caste questions, involving purely religious rites or ceremonies, suits for upholding mere dignity or honor, suits for recovery of voluntary payments or offerings and suits against expulsions from caste. An injunction would issue to restrain infringement of intellectual property rights (patents, trademarks, copyrights, designs), to prevent environmental degradation, to protect one' s reputation by restraining publication of defamatory statements, to restrain the trespasser from entering upon the claimant' s land, to restrain the illegal construction being carried out which may cause damage to claimant' s property, to restrain the prosecution of judicial proceedings or arbitration proceedings, to restrain a person from selling the property which belongs to the claimants, and other civil matters.

Area of Research: The most potent remedy available in litigation is that of injunction. If used wisely and promptly, it can ensure obedience to the legal obligations and can prevent irreversible damage. At the same time, indiscriminate issuance can bring a continuing enterprise to a grinding halt. The ramifications of its use are wide. Due to its reach and coercive power, it is a much sought after remedy. Today most cases on the civil side are being filed for injunction alone under the ambit of civil procedure code.

This study revolves around the study of principles and procedure and strengths of injunction as an instrument for imparting justice. It focuses on unique characteristic features of this measure, namely of equity. It is proposed to evaluate whether these attributes add to the efficacy of the directive, or do they weaken its value as a tool of righteousness. The study probes into whether these components augment the complexity of the dictum and make it more elusive, or do enhance its evenhandedness by empowering courts with greater leverage.

Review of Literature:

1) Mulla Code of civil procedure (Abridged) Fourteenth Edition section 1 order 51 published by LexisNexis Butterworth India. Page no.1583-1617, The author has covered all the civil procedure code and a emphasis is given on all types of Injunction and interlocutory order, Duration of injunction, " The court may by order grant Temporary Injunction to restrain such act, or make such order for the purpose of staying and preventing the wasting ,damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff or otherwise causing injury to the plaintiff in relating to any property in dispute in the suits as the court thinks fit, until the disposal of the suit or until further orders" .

2) Sir John Woodroffe &Ameer Ali' s Code of civil Procedure Third edition in three volumes, Delhi Law house. Page no -2602. The book on civil procedure code is written in clear language, on part of injunction the author says, " Injunction should not be granted where they inflict more injury on the person sought to be injucted on the applicant" . " No injunction should ordinarily be granted by a court where it defeats any statutory provision" .

3) The code of civil procedure, 1908 (As applicable to Maharashtra) by Arshad Subzwari advocate edition 1995 published by Ashok Grover and sons osmanpura Aurangabad. Page no 353-363. "The book provides the required provisions at a glance, all the amendments made by the state government and the Bombay high court in the civil Procedure code ,have been carried out and provided in this book with a view to facilitate the required and applicable provisions very easily and quickly."

4) Commentary on Code of civil procedure, 1908(As amended up-to-date) with state amendments & High court Amendments) by A.K.Banerjee Advocate 2007 VOL.2 [or.XIV to End] publish by DWIVEDI & COMPANY ALLAHBAD.Page, 508 " The purpose of the book presenting before the readers continues to be providing the lawyers, Bar and Bench and the person interested in the subject with complete and up to date account of entire gamut of civil procedure code" .

5) Code of Civil Procedure & Limitation act by Dr. S. R. Myneni, Published by ASIA LAW HOUSE Hyderabad. Page no 344, " The observance of civil procedure provides fair justice without any delay" . " Injunctions are a form of equitable relief and to be adjusted in aid of equity and justice to the facts of each particular case" .

HYPOTHESIS:

Under the civil procedural law Injunction is the most potent tool available to the courts for timely and effective justice, rests on principles of equity.

The importance of the facts and factors in grant of injunction does not remain constant.

legislative, judicial and equitable factors makes the decision making process renders the law of injunctions technical and difficult to keep it uniform, and this lack of uniformity is often misconstrued as arbitrariness.

Procedural complexities make injunction a difficult judicial remedy.

This Hypothesis will be tested by the researcher by applying Doctrinal research methodology.

Research Methodology:

The research method applied for study is proposes to be analytical, historical and doctrinal. This includes Data collection method; following are taken into consideration,

1] Injunction, study the meaning nature and importance of injunction its characteristic features, ingredients, the impact of principles of equity are all required to be assessed.

2] Origin and historical development of Injunction.

3] Limitations of Injunctions.

4] leading cases decided by Indian Judiciary and United Kingdom, United States of America, Australia, Canada, Turkey.

5] The procedure and enforcement of injunction law is needed to be scrutinized to ascertain the existence of uniformity and consistency or the lack of it.

6]As the researcher has taken the secondary method for collection of data, Data is collected from law books, reports of different commissions, international bodies, statutes, laws, decisions of supreme court and High courts, journals and articles. Judicial decisions and works of eminent jurists on the subject continue to widen horizons and therefore a number of judgments and orders of courts are examined and critically appraised. The efficacy of the judgments and orders shall been ascertained and methods of making injunction orders more meaningful and effective are explored. Select material is also downloaded from the Internet. Cases are intricately studied and supplemented with the literature available on the subject. Library is the best place and source of data collection.

Limitations of Study: The researcher will take utmost care for the proposed study however still is restricted due to

1] Selection of leading cases is at the discretion of the researcher.

2] Study of procedure and principles of injunction in India with its limitations will be taken into consideration not very deeply and broadly but as the researcher thinks appropriate.

3] Selection of topics, comparison, study material selection from India and United Kingdom, United States of America, Australia, Canada, Turkey etc is at the sole discretion of the Research scholar.

CHAPTERISATION:

The present **a critical study on Injunction of Principles and Procedure in India**, The research work has been divided into seven chapters;

1) Introduction

2) Origin and historical Development

3) Principles in grant of Injunction in India,

4) Procedure and enforcement of Injunction

5) Judicial Activism on injunction

6) National and International leading cases

7) Conclusion Finding and suggestion

BIBLIOGRAPHY

I **BASIC SOURCES**

A. Constitution of India

B. Statutes

1. Specific Relief Act, 1963.

2. Code of Civil Procedure, 1908.

3. The Suits Valuation Act, 1887.

4. The Court Fees' Act, 1870.

C. Reports

1. Report of Law Commission of India, 1833.

2. Report of Law Commission of India, 1861.

3. Report of Law Commission of India on Specific Relief Act, 1887.

4. Report of Law Commission of India, 1955.

5. International Law Association Report of the Sixty-Seventh Conference held at Helsinki, Finland, 12 to 17 August, 1996 (1996).

6. Report of Law commission of India Fifty Fourth Report on The code of civil Procedure, 1908. February 1973.

7- Report of law commission of India One hundred Forty-fourth on conflicting judicial decisions pertaining to the code of civil procedure 1908, April 1992.

8- Report of law commission of India One hundred and fiftieth (150) on suggesting some amendments to the code of civil procedure (act v of 1908), 1994.

9- Report of law commission of India 163,The code of civil procedure (amendment bill), 1997.

10- Report of law commission of India -240 costs in civil litigation

11- Report of law commission of India -221st need for speedy justice

12- Report of law commission of India -189th on Revision of court fees

Books

A. Mulla The code of civil procedure

B. Tandon' s the code of civil procedure by Justice Rajesh Tandon.

C. Civil procedure by c.k. Tokwani.

D. N.K.Acharaya Guide to c.p.c

E. Dr s. r. Myneni code of civil procedure and limitation act.

F. Dr V.k.chary' s and Dr.G.B.Reddey' s the code of civil Procedure.

G. Mathur The code of civil procedure.

H. Dr Subzawari' s the code of civil procedure1908.

I. M.P Jain The code of civil procedure 3rd edition 2011.

J. Sarkar' s commentary on the code of civil Proce3dure vol 1, 2.

K. Law of injunction by P.S.Narayana 5th edition 2001, Asia law house.

L. Dr.Nandlal' s the code of civil procedure.

M. Dr.Tripathi The code of civil procedure

N. Chaudhri' s The code of civil procedure

O. Sir john Woodroffe &Ameer Ali' s code of civil procedure.

P. ALT' S the code of civil procedure.

Q. Agarwala on code of civil procedure.

R. Banerjee' s Commentary on The code of civil procedure 1908.

S. Anand and Iyer, The Specific Relief Act, 1963, Delhi Law House, 11th Edn. 2004.

Iii DICTIONARIES:

1] Concise law Dictionary-P Ramantha Aiyar 1997 edition reprint 2004.

2] Compact oxford Dictionary Thesaurus and word power guide[Indian edition]

Iv Webliography:

https://indiankanoon.org/

https://lawcommissionofindia.nic.in/

https://www.livelaw.in/

https://thoughts.ipleaders.in/

https://www.pathlegal.in/

https://www.lawctopus.com/

https://www.barandbench.com/

https://www.scconline.com/

https://www.legallyindia.com/

https://www.vakilno1.com/

https://lawtimesjournal.in/

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